

Temporary Closing of the Determination Letter Program for Adopters of Pre-Approved Defined Benefit Plans

Announcement 2009-85

On February 22, 2010, the Service will temporarily stop accepting applications for determination letters for defined benefit plans that are filed on Form 5307, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans* for the GUST¹ program. The Service is taking this action because all pre-approved (*i.e.*, master and prototype and volume submitter) defined benefit plans are required to be restated to comply with items identified for review in Notice 2007-3, 2007-1 C.B. 255 (“2006 Cumulative List”), including the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, (“EGTRRA”) (with technical corrections made by the Job Creation and Worker Assistance Act of 2002 (JCWAA), Pub. L. 104-147), the Pension Funding Equity Act of 2004 (PFEA), Pub. L. 108-218, the American Jobs Creation Act of 2004 (AJCA), Pub. L. 108-357, the Gulf Opportunity Zone Act of 2005 (GOZA), Pub. L. 109-135, and certain law changes under the Pension Protection Act of 2006 (PPA '06), Pub. L. 109-280 (“restated pre-approved plans”). These restated pre-approved plans will be submitted to the Service for a determination letter (if needed) using Form 5307 during a period of approximately two years, which the Service expects to announce early in 2010. The temporary hiatus in accepting Form 5307 applications will allow the Service to prepare to receive the applications submitted by adopters of these restated pre-approved plans.

Rev. Proc. 2007-44, 2007-2 C.B. 54, and Rev. Proc. 2005-16, 2005-1 C.B. 674, describe a staggered remedial amendment system for plans that are qualified under § 401(a) of the Internal Revenue Code, with five-year amendment/approval cycles for individually designed plans and six-year cycles for pre-approved plans. The submission period for the initial six-year cycle for sponsors and practitioners maintaining pre-approved defined benefit plans ran from February 1, 2007 to January 31, 2008. Sponsors and practitioners were required to restate their pre-approved defined benefit plans for EGTRRA and other changes in plan qualification requirements described in the 2006 Cumulative List, and apply for new opinion and advisory letters during this submission period. As provided in Rev. Proc. 2007-44, when the review of the pre-approved defined benefit plans is near completion, the Service will publish an announcement providing the date by which adopting employers must adopt the newly approved plans. This date will also be the deadline for adopting employers to file Form

¹ The term “GUST” refers to the following:

- the Uruguay Round Agreements Act, Pub. L. 103–465;
- the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103–353;
- the Small Business Job Protection Act of 1996, Pub. L. 104–188;
- the Taxpayer Relief Act of 1997, Pub. L. 105–34;
- the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206; and
- the Community Renewal Tax Relief Act of 2000, Pub. L. 106–554.

5307 determination letter applications for their restated pre-approved defined benefit plans. The Service expects to publish this announcement early in 2010 and anticipates that adopting employers will have approximately two years to adopt the restated plans and request determination letters.

In order to prepare to receive the Form 5307 applications for the restated defined benefit plans that will be filed starting in 2010, the Service will temporarily stop accepting determination letter applications for defined benefit plans filed on Form 5307, beginning February 22, 2010. The Service will continue to process determination letter applications for defined benefit plans filed on Form 5307 before February 22, 2010, provided the plan has a favorable GUST opinion or advisory letter. Any determination letter application for a defined benefit plan filed on Form 5307 postmarked on or after February 22, 2010, and before the opening of the period of approximately two years for adopting the restated pre-approved defined benefit plans will be returned to the applicant.

This announcement does not affect the ability of adopting employers to apply for determination letters on Form 5307 for pre-approved defined contribution plans. See Announcement 2008-23, 2008-1 C.B. 731. This announcement also does not affect the ability of adopting employers of pre-approved plans (whether defined benefit or defined contribution) to apply on Form 5307 for a determination letter for plan amendments related to a voluntary correction program (VCP) submission or as required under the correction on audit program (Audit CAP), under the procedures described in Rev. Proc. 2008-50, 2008-2 C.B. 464.